

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSHUA HALL

Claimant

VS.

CESSNA AIRCRAFT COMPANY

Self-Insured Respondent

Docket No. 1,046,811

ORDER

Respondent requested review of the April 19, 2010 Award by Administrative Law Judge (ALJ) Nelsonna Potts Barnes. The Board heard oral argument on July 21, 2010.

APPEARANCES

Phillip Slape, of Wichita, Kansas, appeared for the claimant. Vince Burnett, of Wichita, Kansas, appeared for self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The only issue in this appeal is the nature and extent of claimant's impairment as a result of his November 3, 2008 injury. After considering the evidence, the ALJ averaged the impairment opinions authored by Drs. Munhall and Stein, and awarded claimant an 8.5 percent functional impairment to the right lower extremity (knee).¹ Respondent appealed

¹ All impairment ratings in this matter are to the right knee and were issued consistent with the principles set forth in the 4th edition of the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (A.M.A. Guides).

this determination alleging the Award should be modified to reflect a zero percent impairment, as suggested by claimant's treating physician, Dr. Prohaska. Alternatively, respondent contends claimant's impairment is, at best, 5 percent as opined by Dr. Stein or an average of all of the physicians' opinions, yielding a 5.6 percent.

Claimant argues that the ALJ's Award should be modified to increase his impairment to 12 percent to the right lower extremity.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The ALJ's Award accurately and succinctly sets out the evidence contained within the record. Rather than unnecessarily repeat the evidence the Board merely adopts that recitation as its own as if more fully set forth herein.

Succinctly put, the single issue in this appeal is the question of claimant's impairment as a result of his work-related accident. The treating physician, Dr. Daniel Prohaska, evaluated claimant's complaints which included an acute onset of pain and a resulting mass on the right knee, and ordered diagnostic tests which included x-rays and an MRI. He ultimately performed arthroscopic surgery on March 13, 2009 to claimant's right knee and identified "intact cartilage, intact ligaments, intact meniscus" along with a "small area of soft tissue" resting on top of the distal femur.² The mass was removed and following a period of convalescence, claimant was released to return to work with no restrictions as of May 5, 2009.

Dr. Prohaska testified that claimant bears no impairment as a result of his injury or the surgery that is described above. In essence, Dr. Prohaska believes that removal of the mass left claimant with a normal knee and thus, no impairment rating was warranted. Dr. Prohaska acknowledges that claimant continues to express complaints of pain when he stands for extended periods of time and that he also experiences problems walking, and climbing stairs and that he takes pain medications and anti-inflammatories.

Claimant was also examined by Dr. Michael Munhall, at his lawyer's request. Dr. Munhall assigned a 12 percent impairment to claimant's right knee based solely upon claimant's demonstrable lack of strength and weakness during the examination and a functional capacities evaluation. According to Dr. Munhall, this rating comes directly from the *Guides*.

² Prohaska Depo. at 13.

Dr. Paul Stein also examined claimant at respondent's request. Dr. Stein assigned a 5 percent impairment to the knee based upon the history of claimant's injury and the resulting crepitus identified during the examination.

In reviewing the evidence, the ALJ concluded that the opinions of Drs. Munhall and Stein were more persuasive and thus, she averaged the two impairment findings and awarded claimant a 5 percent impairment. The ALJ acknowledged Dr. Prohaska's opinions, but she was more "persuaded by claimant's testimony and the medical records and testimony of Dr. Munhall and Dr. Stein."³

The Board has considered the evidence, the parties' arguments and the record as a whole and finds the ALJ's analysis is sound and should not be disturbed. The ALJ's Award is, therefore, affirmed in all respects.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated April 19, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Phillip Slape, Attorney for Claimant
Vince Burnett, Attorney for Self-Insured Respondent
Nelsonna Potts Barnes, Administrative Law Judge

³ ALJ Award (Apr. 19, 2010) at 4.

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ORDER NUNC PRO TUNC

It has come to the Board's attention that a typographical error was made in the second paragraph on page 3 of its August 11, 2010 Order. The paragraph should read as follows:

In reviewing the evidence, the ALJ concluded that the opinions of Drs. Munhall and Stein were more persuasive and thus, she averaged the two impairment findings and awarded claimant an 8.5 percent impairment. The ALJ acknowledged Dr. Prohaska's opinions, but she was more "persuaded by claimant's testimony and the medical records and testimony of Dr. Munhall and Dr. Stein."⁴

⁴ ALJ Award (Apr. 19, 2010) at 4.

IT IS SO ORDERED.

Dated this _____ day of August 2010.

BOARD MEMBER

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c: Phillip Slape, Attorney for Claimant
Vince Burnett, Attorney for Self-Insured Respondent
Nelsonna Potts Barnes, Administrative Law Judge